No. 6.66

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. W. S. KENNEDY, PLAINTIFF IN ERROR,

v.

FREDERICK W. BECKER, SHERIFF OF ERIE COUNTY.

BRIEF FOR THE UNITED STATES.

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INDEX AND SUMMARY.

CITATIONS.

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BRIEF FOR THE UNITED STATES.

The facts are stated in full in the brief for the plaintiff in error. For convenience of the Court, however, the so-called Hartford Convention, the treaty of the Big Tree or Genesee[1] (7 Stat. 601), and the pertinent provisions of the Indian intercourse act of May 19, 1796 (1 Stat. 469), are set forth in Appendix A (p. 21), Appendix B (p. 32), and Appendix C (p. 42) of this brief.

In 1786, and long prior thereto, the States of New York and Massachusetts both claimed the ultimate right of soil and sovereign jurisdiction in and over the lands, then occupied by the Seneca and other

[1] As printed in the Statutes at Large, the document is incomplete. The original on file in the State Department has prefixed to it the language of the President proclaiming the treaty and a notation or indorsement at the end, signed by him, evidencing its ratification, etc. The completed instrument is printed in full in the appendix, including certificates of its execution, by a master in chancery in New York and a notation of its recordation in the secretary's office of the State. A certified copy of the complete instrument is produced here for the inspection of this court.

Indians, which lie within the present boundaries of the State of New York. In that year, by the Hartford Convention so-called, the controversy was settled as between the two States in the following manner: New York quitclaimed to Massachusetts the ultimate title to the soil subject to the Indian right of occupancy—the "preemptive right," as it was then styled. Massachusetts relinquished to New York all rights of sovereignty and jurisdiction over the lands. Thereafter Massachusetts sold to Robert Morris its "preemptive right." The Constitution of the United States having been adopted, the Seneca Nation "at a full and general treaty" held September 15, 1797, by a commissioner representing the President, agreed to cede a part of their lands, including the locus of the offense alleged in this case, to Robert Morris. The money consideration was $100,000, and was to be invested in stock of the Bank of the United States, issued to the President, to be held by him for the use and benefit of the Indians. The treaty was embodied in a document which styles itself an "indenture." By this document the Indians conveyed part of their lands, by metes and bounds, description, reserving absolutely certain tracts within the boundaries, and further reserving fishing and hunting rights in the following language:

> * * * also excepting and reserving to them the said parties of the first part and their heirs the privilege of fishing and hunting on the said tract of land hereby intended to be conveyed.

On December 12, 1797, the Senate gave its

> advice and consent to the ratification of the treaty * * * as soon as the President shall be satisfied that the investment of the money has been made conformably to the intention of the said treaty. (Executive Journal of the Senate, edition of 1828, vol. 1, pp. 254–255.)

At the foot of the original document, on file in the State Department, and over the signature of President John Adams, appears the following, under date of April 11, 1798:

> Now be it known that I John Adams, President of the United States of America, having seen and considered the said convention or treaty and being satisfied that the investment of the money therein mentioned, has been made conformably to the intention of the said convention or treaty, do by and with the advice and consent of the Senate, accept, ratify and confirm the same, and every clause and article thereof.

I.

The clause of the treaty relating to fishing and hunting rights is to be construed as reserving to the Indians a free and perpetual right to take fish and game on the lands ceded, at least for their own subsistence and by the means and methods then known and practiced by them.

> The language used in treaties with the Indians should never be construed to their prejudice. * * * How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction. (Con-

curring opinion of Mr. Justice Johnson in *Worcester* v. *Georgia*, 6 Pet., 515, 581.)

This rule, reiterated again and again in varying forms of expression and applied in numerous cases by this Court, has become fundamental in the construction of Indian treaties.

The Kansas Indians, 5 Wall., 737, 760.

The Choctaw Nation v. *United States*, 119 U. S., 1, 27, 28.

Jones v. *Meehan*, 175 U. S., 1, 11.

United States v. *Winans*, 198 U. S., 371, 380.

Northern Pacific Ry. Co. v. *United States*, 227 U. S., 355, 362, 367.

In *Winters* v. *United States*, 207 U. S., 564, this court, by implication from the attendant circumstances, read into a treaty with certain Montana Indians a far-reaching provision in their favor relating to a matter upon which the treaty itself was wholly silent. In *Jones* v. *Meehan*, *supra*, and the long series of cases there reviewed by this Court, it was held that treaties ceding lands to the United States and reserving specific tracts to individual Indians operate, not merely upon the right of occupancy, but, by *implication*, convey the fee from the Government to the Indian.

In the treaty of Big Tree there is no patent ambiguity. It contains words of perpetuity certainly binding on the white men. It was made at a time when restrictive game laws, even for the whites, were practically unknown in this country. No Government at that time had attempted to control

the Indians as to the means, methods, or times of taking fish and game. Their hunting and fishing in their own territory was free and unrestricted, unless regulated and controlled by their own customs. They were dealing only with the United States and, through the United States, with Robert Morris. To say that they understood, or must be held to have understood, that a third party, namely, the State of New York, might on the next day or at any time in the future, by restrictive or prohibitive game laws, deprive them of all the substantial benefits of this term of the treaty, is to reverse the rule of interpretation, invert the mental processes of this Court in *Winters* v. *United States, supra,* and *by implication* hold the Indians to a knowledge and acceptance of remote legal and constitutional relations of which they were in fact entirely ignorant.[1]

It seems clear, therefore, that the *meaning* of this reservation, whether enforcible as against the State of New York or not, was that the Indians were to retain a perpetual right of free hunting and fishing on the lands sold; so far, at least, as the exercise of that right should not interfere with the improvements and cultivation of future settlers thereon. As to these, no doubt, their experience of the advance of settlement and cultivation was such that they may reasonably be said to have had them in contemplation.

The real question, therefore, is one of the constitutional powers of the State and Nation, respectively.

[1] See especially speech of Red Jacket, a Seneca Chief, quoted in Appendix D, infra p. 43.

II.

The Seneca and other New York tribal Indians are wards, not of the State, but of the United States.

To the claim of New York, that the Seneca and other Six Nation Indians are wards of the State and subject to her legislation both on their reservations and on the lands ceded, the case of *Worcester* v. *Georgia*, 6 Pet., 515, is a complete answer, unless there is something in the history of these tribes that places them in a wholly different position from that occupied by the Cherokees in Georgia. The argument that there is such a difference received its latest and strongest expression by Mr. Justice Andrews of the New York Supreme Court, at a trial term in 1914 (*George* v. *Pierce*, 85 Misc., 105). It is sufficient to say that the expressions and alleged acts of submission to the King, the Duke of York, and the Colony of New York, there relied on, are substantially of the same general character as the expressions of submission and dependence vainly urged on behalf of Georgia in the *Worcester case*. And even if it were conceded (and it is not) that New York by reason either of these historical facts, or the relinquishment of Massachusetts, had some special jurisdiction over these Indians prior to 1789, that jurisdiction necessarily passed to the Federal Government on the adoption of the Constitution. Massachusetts could transfer no greater jurisdiction than she then had, and whatever she conferred upon New York was subject to the constitutional redistribution of sovereign powers.

In any event, the United States, both before and after the adoption of the Constitution, has repeatedly made treaties with Six Nation Tribes. This Court has enforced those treaties, as the supreme law of the land, against the State, and against private parties claiming under the State, and has expressly declared that the New York Indians are the wards of the Nation.

The New York Indians, 5 Wall., 761.

Fellows v. *Blacksmith*, 19 How., 366:

> * * * the treaty [of 1838] was to be carried into execution by the authority or power of the Government, which was a party to it; and more especially, when made with a tribe of Indians who are in a state of pupilage, and hold the relation to the Government as a ward to his guardian (p. 371).

The political branch of the Federal Government is now actively exercising guardianship over these Indians. They are now in charge of an Indian agent of the United States (Rec., p. 4).

Finally, the question has been conclusively set at rest, so far as the New York courts are concerned, by a decision from which there was no dissent, rendered by the Court of Appeals June 16, 1914 (*People ex rel Cusic* v. *Daly*, 212 N. Y., 183). There it was held that the Federal statute of 1885 (23 Stat. 385), providing *inter alia* for the trial by the Federal courts of certain crimes committed on Indian reservations "within the boundaries of any State of the United States" is applicable to the New York Indians, and

deprives the State courts of jurisdiction over such crimes.

After referring to the opinion of Mr. Justice Andrews in *George* v. *Pierce*, *supra*, the court said:

> As bearing upon the question whether the New York Indians are to be regarded as the wards of the Nation or of the State, we think there was no less reason for placing them under the protectorate of the Federal Government than there was for extending it to the other tribes resident in any of the original thirteen colonies. (P. 192.)

Again:

> The Indians, although native sons of our soil, are not citizens either of the Nation or State. They are heralded as the wards of the Nation, and in their collective or tribal capacity they have been relegated to the status of foreign nations with whom the Federal Government has entered into treaty relations. This anomaly has been accentuated by the State legislation and treaties which, from time to time and in various ways, have indicated the purpose of the State to subject the Indians within our borders to the control of our laws and the jurisdiction of our courts. The fact remains, however, that Congress has always asserted and exercised the right to legislate in all Indian affairs, and its power to do so has been upheld by the Supreme Court in a case involving the very statute now under consideration. (*United States* v. *Kagama*, 118 U. S., 375, 384.) (P. 196.)

III.

The hunting and fishing rights involved are a part of the original Indian rights of occupancy, reserved in the very inception of treaties, never relinquished, and consequently still under the ancient Indian title. The same is true, therefore, always remained as Indian reservations are named.

This reservation of ancient rights distinguishes the case from Ward v. New Haven (98 U. S. 381, and many similar) United States v. Winans (198 U. S. 371). The reservation was simply a grant of certain interests in land with a reservation to the grantor of other interests which they chose not to sell, analogous to a conveyance by a private owner with reservation of rights of way. The Indians do not hold at or under Indian Wards, or the United States, or the State of New York; for none of these ever had or owned the rights involved. Morris was satisfied to buy an incomplete title and the United States, through its agent, consummated the transaction for him. New York did not object, and her rights and jurisdiction were in no way diminished thereby. In fact, her jurisdiction and police powers were extended over new territory—as to the whites for all purposes and as to the Indians, for all purposes except the power to control them in hunting and fishing in connection, at least, with their ancient customs and for purposes of their own subsistence.

New York, therefore, can not exclude the Indians in their ancient and lawful use of the waters in question unless she possessed the power so to

control them on their reservation before the cession. This, as has already been shown, she could not do. She could not extend her general system of laws over the reservations (*Worcester* v. *Georgia, supra*); she could not tax the reservation lands, or, through her courts, eject the Indians from any part of them, even after an unqualified cession, so long as the Indians remained in the actual occupancy thereof (*The New York Indians* and *Fellows* v. *Blacksmith, supra*). There is nothing peculiarly sacred in State control over fish and game; and in the West, applying the fundamental principle of the three cases last above cited, the courts have expressly held that State fish and game laws can not be enforced against Indians on their own reservations. (*In re Blackbird,* 109 Fed., 139; *In re Lincoln,* 129 Fed., 247; *State* v. *Campbell,* 53 Minn., 354.)

IV.

The reserved rights of hunting and fishing are secured to the Seneca Indians by the word of the United States given at a public treaty, which is the supreme law of the land.

The instrument embodying the treaty of Big Tree is styled an indenture. But this Court looks at the substance and not merely at the form. The document recites the holding of a treaty "under the authority of the United States" by "the Hon. Jeremiah Wadsworth, Esq., a commissioner appointed by the President of the United States to hold the same in pursuance of the Constitution and the act of the Congress"; and it embodies the terms there agreed upon.

Under the law then and ever since in force, no private individual or State could purchase Indian lands except at a "treaty or convention entered into pursuant to the Constitution" of the United States. It was a misdemeanor punishable by fine and imprisonment in any person "not employed under the authority of the United States" to treat with an Indian or Indian tribe for the purchase of lands. It was lawful, however, for an agent of a State to be present at a "treaty held with Indians under authority of the United States," and "in the presence and with the approbation" of the United States commissioner to "adjust with the Indians the compensation to be made for their claims to land within such State which shall be extinguished by treaty." (Act of May 19, 1796, sec. 12, 1 Stat., 469, Appendix, p. 42.)

A treaty, therefore, made in conformity with this statute and ratified by the Senate was, as the statute itself declared, a treaty or convention "entered into pursuant to the Constitution" and a treaty "held with Indians under authority of the United States." And the Constitution declares that "all treaties made under authority of the United States shall be the supreme law of the land."

It can be of no consequence, therefore, that this instrument contains no *express* stipulations or guaranties by the United States. The consideration for the cession was twofold—the payment of $100,000 to be invested in stock of the Bank of the United States and held in the name of the President "for the use and benefit of said nation of Indians," and the right

to hunt and fish upon the ceded lands according to the true intent of the reservation clause. The obligation of the United States to see that the money was paid and so invested was performed by the President, as we have seen, but there was a continuing obligation to administer the fund for the benefit of the Indians. Is it conceivable that the faith of the United States was not also pledged to see that the Indians should receive the other branch of the consideration, which could be enjoyed only in the future? Could the Indians possibly have had any other thought? Could President Adams have believed otherwise when he wrote at the foot of the treaty:

> I * * * do, by and with the advice and consent of the Senate, accept, ratify, and confirm the same, and every clause and article thereof.

Indian treaties have the same constitutional sanction and supremacy as do treaties with foreign nations. It has been expressly so declared by this Court of a treaty made with New York Indians *Fellows* v. *Blacksmith* (19 How., 366, 372). It would be a work of supererogation to refer to the numerous cases in which this and other courts have given effect to such supremacy.

To say that fish and game laws are enacted in the exercise of police powers does not help the position of the State. There is nothing sacrosanct about State police powers. They are nowhere described or defined in the Constitution. The powers conferred upon the Federal Government are specified and enumerated. Those residing in the State are not; they

include only powers remaining after those granted and those prohibited have been carved out of the total sovereignty. State police laws must yield when clearly in conflict with the prohibitions of the Constitution (*Eubank* v. *Richmond*, 226 U. S., 137) or with Federal laws or treaties passed or made in the exercise of powers clearly granted (*Sligh* v. *Kirkwood*, 237 U. S., 52, 58; *Geoffrey* v. *Riggs*, 133 U. S., 258, 266–7). The fishing wheel, involved in *United States* v. *Winans* (198 U. S., 371), was maintained under State police laws, for the granting of the license for its operation was both a regulation of fishing and a revenue measure.

The United States may, by treaty, continue in force its legislation forbidding the sale of intoxicating liquors to Indians, even upon lands which have been ceded and patented to whites under the townsite laws. *Dick* v. *United States*, 208 U. S., 340. See also *Johnson* v. *Gearlds*, 234 U. S. 422. And Federal legislation may continue in force after the Indian lands have been allotted in severalty and are held under trust patents, although the Indians have become citizens of the States. *United States* v. *Pelican*, 232 U. S., 442, 447, and cases there cited; *Perrin* v. *United States*, 232 U. S., 478. It can not be denied that these exertions of Federal power abridged the free exercise of their ordinary police power to control the sale of intoxicating liquors by the States concerned. Those authorities are applicable here, for the power of the United States over Indian relations does not depend upon Federal ownership of the lands they

occupy, but upon the subject matter. See *United States* v. *Forty-three Gallons of Whiskey*, 93 U. S., 188, where the court said:

> This stipulation was not only reasonable in itself, but was justly due from a strong government to a weak people that it had engaged to protect. * * * Based, as it is, exclusively on the Federal authority over the *subject matter*, there is no disturbance of the principle of State equality (p. 197).
>
> *Perrin* v. *United States*, 232 U. S., 478, 484–5.
>
> *United States* v. *Sandoval*, 231 U. S., 28.

Mere ownership of the fee in lands within a State enlarges the Government's legislative power only for the purpose of protecting and enforcing its proprietary rights therein, and protecting the officers and agents employed to administer them.

The agreement here involved was within the scope of the treaty-making power vested in the Government.

> Inasmuch as the power [to make treaties] is given, in general terms, without any description of the objects intended to be embraced within its scope, it must be assumed that the framers of the Constitution intended that it should extend to all those objects which in the intercourse of nations had usually been regarded as the proper subjects of negotiation and treaty, if not inconsistent with the nature of our Government and the relation between the States and the United States. *Holden* v. *Joy*, 17 Wall., 211, 243 (involving an Indian treaty); *Geoffrey* v. *Riggs*, 133 U. S., 258, 267.

The last lines above quoted refer, of course, to the nature of our Government and the relations between the States and the Union, *as established by the Federal Constitution;* and that Constitution, as above shown, contains prohibitions and grants powers which curb the exercise of State police authority in many directions.

In *Geer* v. *Connecticut*, 161 U. S., 519, it was said that the power to control the taking of animals *ferae naturae*,

> which the Colonies thus possessed passed to the States with the separation from the mother country, and remains in them at the present day, *in so far as its exercise may be not incompatible with, or restrained by, the rights conveyed to the Federal Government by the Constitution* p. (528). [Italics mine.]

In that case it was held, after very profound consideration, that the particular exercise there involved, by Connecticut, of the power to control the taking and disposal of game was not incompatible with or restrained by the Constitutional grant of power to Congress over interstate commerce. But the decision is no authority for the proposition that the granted power to make treaties with Indian tribes may not be so exercised as to restrain State legislation concerning the taking of game and fish.

Ward v. *Race Horse*, 163 U. S., 504, is clearly distinguishable from the case under consideration. The lands there involved were not affected by any

ancient Indian rights reserved in the very act of cession. They were public lands to which the Indian title had been totally extinguished; and over such land State game laws undoubtedly extend. The Court repeatedly pointed out and emphasized the temporary character of the hunting rights granted by the treaty; and it was not unreasonable to hold that the contingencies on which the right was to terminate happened when the State was admitted to the Union. Moreover, the Court did not *decide* that the Federal Government had no *power* by the use of appropriate language, to secure to the Indians a right of hunting after the admission of the State. What was said about police powers and the effect of admitting a State on an equal footing with the original States was advanced merely to indicate the true interpretation of the treaty and of the act of admission. This is shown by the language used on page 514.

The *Race Horse case,* in short, decided only that the statute admitting Wyoming into the Union as a State repealed the provision of the treaty granting to the Indians rights of hunting upon the unoccupied lands of the United States, and that the treaty in itself contemplated that such rights were to be extinguished by the admission of the State. The case did not hold that it was not within the power of the Federal Government to secure to Indians by treaty a reserved right of hunting or fishing on ceded lands thereafter included within the boundaries of a State.

Indeed, the later *Winans case* expressly decided that the United States might by treaty impose a servitude upon specified lands which would prevail even after the admission into the Union of the State containing these lands.

V.

The operation of the State fish and game laws was excluded by the exercise of Federal power.

The theory that a State may regulate the rights of tribal Indians in regard to any matter upon which the Federal authority has failed to act is obviously unsound. In practice it would have defeated the very purposes which so urgently moved the Constitution makers to place the subject of Indian relations under the control of the General Government.

> From necessity there can be no divided authority. The *Kansas Indians*, 5 Wall., 737, 755.

This has been fully shown in the brief of counsel for the plaintiff in error and needs no further comment.

But, even if that theory were sound, there is no room for its application here. Unless the treaty is to be construed as herein contended, the case for the Indians falls to the ground. If, on the other hand, that construction is correct, then it becomes clear that the Federal authority had acted upon the very subject matter to which the State now seeks to apply her laws. By a treaty never abrogated, never modified or repealed, the United States had declared and still declares, that the Seneca Indians have a free

right of fishing and hunting upon the ceded lands, with such limitations only as the treaty itself reasonably implies; and no room was left for State legislation.

SUMMARY.

In the case at bar there is no question of repeal of the treaty by any statute of admission to the Union. New York was already within the Union at the time of the treaty. The land in question at the time of the treaty was within the geographical limits of the State of New York; but being land owned by the Indians was not subject to the jurisdiction of the State of New York. The Indians upon this land were wards of the United States and protected by its laws. New York gained its jurisdiction over these lands only when they were sold by the Indians to Morris; and as this sale was made by means of a treaty with the United States, New York acquired only such jurisdiction over the lands as was compatible with the terms of the treaty. In the cession of Indian lands, it is within the power of the United States by statute or treaty to impose such restrictions, reservations, or servitudes as it may deem necessary for the protection or benefit of its Indian wards. These restrictions so imposed may prevent the exercise by the State of police powers which it might otherwise exercise on the lands in question; thus the power to enforce State liquor laws may be limited by a subjection by Federal statute or treaty of the lands to Federal liquor legislation.

When the United States, by the treaty in the case at bar, assented to a reservation by the Indians of hunting and fishing rights in a specified tract of lands—in other words, to a servitude imposed on these lands—the United States Government impliedly agreed to protect these Indians as its wards in the enjoyment of these rights to hunt and fish in the manner usual to Indians at the time of the treaty, and to protect them against any impairment of the rights constituting such servitude by the State government or by anyone.

The real question, then, in this case is: Is the State statute prohibiting fishing with spears inconsistent with the right which the United States by treaty guaranteed to the Indians? If the State statute is so violative of the treaty provision, the State had no power to enact the same so far as these Indians are concerned, and has no jurisdiction to try the Indians for violation of the statute.

It is of course true that the courts do not lightly construe a treaty or an act of Congress so as to override State police laws. On the other hand, Indian treaties are uniformly construed as the Indians would naturally have understood them, and so as to give effect to that superior justice due from the strong to the weak. Here the Indians stipulated for a perpetual right, of transcendent importance to them, without the slightest suggestion in the language used, or in the attendant circumstances, that its exercise, in accordance with their ancient customs, could be interfered with by any third party. It follows that the

State laws limiting the right as to time, means, and methods, so as to make it practically valueless for purposes of continuous subsistence, are in direct conflict with the treaty. Those laws, with their criminal sanctions, "interfere forcibly with the relations established between the United States and the (Seneca) nation, the regulation of which, according to the settled principles of our Constitution, are committed exclusively to the Government of the Union." (*Worcester* v. *Georgia*, *supra*, p. 560.)

It follows that the order remanding the prisoners should be reversed.

CHARLES WARREN,
Assistant Attorney-General.
W. W. DYAR,
Attorney, Department of Justice.

MARCH, 1916.

APPENDIX A.

THE HARTFORD CONVENTION.

(Journals of Congress, Vol. IV, p. 787.)

To all to whom these presents shall come, The underwritten, John Lowell, James Sullivan, Theophilus Parsons, and Rufus King, agents or commissioners, appointed by the commonwealth of Massachusetts of the one part, and the underwritten, James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith, and Egbert Benson, six of the agents or commissioners, appointed by the state of New-York of the other part, send greeting: Whereas the commonwealth of Massachusetts did, heretofore, present a petition to the United States in Congress assembled, thereby, among other things, stating, that all that territory which, in the said petition, is described as "All that part of New-England, in America, which lieth and extendeth between a great river, called Merrimack, and a certain other river there, called Charles river, being the bottom of a bay there, called Massachusetts-Bay: and also, all those lands lying within three English miles to the southward of the southermost part of the said bay; and extending thence northward, in latitude to the northward of every part of said river Merrimack; and in breadth of latitude aforesaid, extending throughout all the main land, in longitude, westwardly, to the southern ocean," was the just and proper right of the said commonwealth; and further, stating, that

the state of New-York had set up a claim to some part of the land before mentioned, the said commonwealth did, therefore, by the said petition, solemnly request of the United States in Congress, that commissioners might be appointed, for enquiring into and determining upon the claim aforesaid, of the legislature of the said commonwealth, and that such other proceedings, respecting the premises, might be had, as are, by the federal government of the said United States, in such case made and provided, as by the said petition, filed among the archives of the United States, reference being thereunto had, may more fully appear. And whereas the state of New-York, doth, in opposition to the said claim of the commonwealth of Massachusetts, claim, as the just and proper right of the said state, as well in respect of property as jurisdiction, all those lands and territories bounded on the north by the parallel of the latitude passing through the said point, place or boundary aforesaid of three miles to the northward of every part of the said river Merrimack, and bounded on the south by the parallel of latitude passing through the said point or place, situate three miles south of the southermost part of the said bay, called Massachusetts-Bay, bounded on the west by the limits between the United States and the king of Great-Britain, and the line of cession from the state of New-York to the United States, and bounded on the east by the line agreed on and established between the late colony of the Massachusetts-Bay and the late colony of New-York, in the year 1773, and from the northern termination of the said line, then bounded on the east by the west bank of Connecticut river. And whereas the state of New-York, having been duly notified, did appear, by their lawful agents,

to vindicate such their said right against the said claim of the said commonwealth, and proceedings were thereupon had in Congress, pursuant to the articles of confederation, in order to the appointment of commissioners or judges to constitute a court for hearing and determining the said matters in question. And whereas the said John Lowell, James Sullivan, Theophilus Parsons and Rufus King, were afterwards, by a certain commission, under the seal of the said commonwealth, and bearing date the 26th day of April, in the 9th year of the independence of the United States, and made in pursuance of an act of the legislature of the said commonwealth, passed the 14th day of March, in the 8th year of the independence of the United States; and of a resolution of the said legislature, passed the 18th day of the said month of March, commissionated to be agents, to manage, conduct and prosecute the claims of the said commonwealth, to the lands described in the said petition. And whereas, afterwards, and pending such proceedings in Congress, the legislature of the commonwealth of Massachusetts did, by an act, entitled an act empowering the agents appointed by this government, to defend the territory on the west side of "Hudson's river, against the claims of the state of New-York, to settle the controversy relative thereto, otherwise than by a federal court, if they shall judge it expedient," enact, that the major part of the said agents or commissioners, should be fully authorized and empowered to agree with the agents or commissioners of the state of New-York, and settle the controversy respecting the territory aforesaid, by a federal court, as appointed by virtue of the confederation, or otherwise, in such way and manner as they should judge would comport with justice and

the interest of the said commonwealth; and the legislature of the state of New-York did, by an act, entitled "An act supplementary to the act, entitled an act to appoint agents or commissioners, for vindicating the right and jurisdiction of this state, against the claims of the commonwealth of Massachusetts, pursuant to the articles of confederation and perpetual union of the United States," among other things enact, that it should be lawful for the said James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith and Robert Yates, and also John Lansing, jun. or any five or more of them, to settle the said controversy between the said state of New-York, and the said commonwealth of Massachusetts, otherwise than by the said federal court, in such manner as they should judge most conducive to the interest of the said state, as by the said commission and the said several acts, relation being thereunto had, may appear: Now, therefore, know ye, that the underwritten commissioners, on the part of the commonwealth of Massachusetts and the state of New-York, respectively, having, by mutual consent, assembled at the city of Hartford, in the state of Connecticut, on the 30th day of November last, in order to the due execution of their respective trusts, and having duly exchanged and considered their respective powers, and declared the same legal and sufficient, after several conferences, and to the end that all interfering claims and controversies between the said commonwealth of Massachusetts and the said state of New-York, as well in respect of jurisdiction as property, may be finally settled and extinguished, and peace and harmony for ever established between them on the most solid foundation; have agreed, and by these presents do

mutually for and in behalf of the said commonwealth of Massachusetts and the said state of New-York, by whom respectively, they, the said commissioners, have been so appointed and authorized as aforesaid, agree to the mutual cessions, grants, releases, and other provisions following, that is to say: First, the commonwealth of Massachusetts doth hereby cede, grant, release and confirm to the state of New-York for ever, all the claim, right and title which the commonwealth of Massachusetts hath to the government, sovereignty and jurisdiction of the lands and territories so claimed by the state of New-York, as herein before stated and particularly specified. Secondly, the state of New-York doth hereby cede, grant, release, and confirm to the said commonwealth of Massachusetts, and to the use of the commonwealth, their grantees, and the heirs and assigns of such grantees for ever, the right of pre-emption of the soil from the native Indians, and all other the estate, right, title, and property (the right and title of government, sovereignty, and jurisdiction excepted) which the state of New-York hath, of, in, or to 230,400 acres to be located by the commonwealth of Massachusetts, and to be situate to the northward of and adjoining to the lands granted respectively to Daniel Coxe and Robert Lettice Hooper, and their respective associates, and between the rivers Oswego and Chenengo, and also of, in, or to all the lands and territories within the following limits and bounds, that is to say, beginning in the north boundary line of the state of Pennsylvania, in the parallel of 42 degrees of north latitude, at a point, distant 82 miles west from the north-east corner of the state of Pennsylvania, on Delaware river, as the said boundary line hath been run and marked by the commissioners

appointed by the states of Pennsylvania and New-York, respectively; and from the said point or place of beginning, running on a due meridian north, to the boundary line between the United States of America and the king of Great-Britain; thence westerly and southerly along the said boundary line, to a meridian which will pass one mile due east from the northern termination of the streight or waters between lake Ontario and lake Erie; thence south along the said meridian to the south shore of lake Ontario; thence on the eastern side of the said streight, by a line always one mile distant from and parallel to the said streight, to lake Erie; thence due west to the boundary line between the United States and the king of Great-Britain; thence along the said boundary line until it meets with a line of cession from the state of New-York, to the United States; thence along the said line of cession, to the northwest corner of the state of Pennsylvania, and thence east along the northern boundary line of the state of Pennsylvania, to the said place of beginning; and which said lands and territories so ceded, granted, released and confirmed, are parcel of the lands and territories described in the said petition. Thirdly, the commonwealth of Massachusetts doth hereby cede, grant, release and confirm to the state of New-York and to the use of the state of New-York, and their grantees, and the heirs and assigns of such grantees forever, the right of pre-emption of the soil from the native Indians, and all other the estate, right, title and property which the commonwealth of Massachusetts hath of, in, or to the residue of the lands and territories so claimed by the state of New-York, as herein before stated and particularly specified. Fourthly, that the lands so ceded, granted, released and confirmed to

the commonwealth of Massachusetts, or such part thereof as shall, from time to time, be and remain the property of the commonwealth of Massachusetts, shall, during the time that the same shall so be and remain such property, be free and exempt from all taxes whatsoever, and that no general or state tax, shall be charged on or collected from the lands hereafter to be granted by the commonwealth of Massachusetts, or on the occupants or proprietors of such lands, until 15 years after such confirmation as is herein after mentioned of such grants shall have expired; but that the lands so to be granted, and the occupants thereof, shall, during the said period, be subject to town or county charges or taxes only; provided that this exemption from general or state taxes shall not be construed to extend to such duties, excises or imposts to which the other inhabitants of the state of New-York shall be subject and liable. Fifthly, that no rents or services shall be reserved in any grants to be made of the said lands, by the commonwealth of Massachusetts. Sixthly, that the inhabitants on the said lands and territories, being citizens of any of the United States, and holding by grants from the commonwealth of Massachusetts, shall be entitled to equal rights with the other citizens of the state of New-York; and further, that the citizens of the commonwealth of Massachusetts, shall, from time to time, and at all times hereafter, have and enjoy the same and equal rights respecting the navigation and fishery on and in lake Ontario and lake Erie, and the waters communicating from the one to the other of the said lakes, and respecting the roads and portages between the said lakes, as shall, from time to time, be had and enjoyed by the citizens of the state of New-York; and the citizens of the commonwealth of

Massachusetts shall not be subject to any other regulations or greater tolls or duties to be made or imposed, from time to time, by the state of New-York, respecting the premises, than the citizens of the state of New-York shall be subject to. Seventhly, that no adverse possession of the said lands for any length of time, shall be adjudged a disseizen of the commonwealth of Massachusetts. Eighthly, that the state of New-York, so long as any part of the said lands shall be and remain the property of the commonwealth of Massachusetts, shall not cede, relinquish, or in any manner divest themselves of the government and jurisdiction of the said lands, or any part thereof, without the consent of the commonwealth of Massachusetts. Ninthly, that the commonwealth of Massachusetts may, from time to time, by person to be by them authorized for the purpose, hold treaties and conferences with the native Indians, relative to the property or right of soil of the said lands and territories hereby ceded, granted, released and confirmed to the commonwealth of Massachusetts, and with such armed force as they shall deem necessary for the more effectual holding such treaty or conference; and the commonwealth of Massachusetts, within six months after such treaties shall respectively be made, shall cause copies thereof to be deposited in the office of the secretary of the state of New-York. Tenthly, the commonwealth of Massachusetts may grant the right of pre-emption of the whole or any part of the said lands and territories, to any person or persons, who, by virtue of such grant, shall have good right to extinguish by purchase, the claims of the native Indians; provided however, that no purchase from the native Indians by any such grantee or grantees shall be valid, unless the same shall be

made in the presence of, and approved by a superintendent to be appointed for such purpose by the commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the commonwealth of Massachusetts. Eleventhly, that the grantees of the said lands and territories under the commonwealth of Massachusetts, shall, within six months after the confirmation of their respective grants, cause such grants, or the confirmations thereof, or copies of such grants or confirmations, certified or exemplified under the seal of the commonwealth of Massachusetts, to be deposited in the said office of secretary of the state of New-York, to the end that the same may be recorded there; and after the same shall have been so recorded, the grantees shall be entitled to receive again from the said secretary, their respective grants or confirmations, or the copies thereof, whichsoever may have been so deposited, without any charges or fees of office whatsoever, and every grant or confirmation which shall not, or of which such copy shall not be so deposited, shall be adjudged void. In testimony whereof, the said John Lowell, James Sullivan, Theophilus Parsons and Rufus King, for and in the name and behalf of the said commonwealth of Massachusetts, and the said James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith and Egbert Benson, for and in the name and on behalf of the said state of New-York, have to these presents, and a duplicate thereof, both indented, interchangeably set their hands and affixed their seals. Done at the city of Hartford aforesaid, the 16th day of December, in the year of our Lord 1786, and the 11th year of the independence of the United States of America. The following errors in

transcribing being corrected before execution, viz. the words [the underwritten] between the 1st and 2d lines, [there] between the 4th and 5th lines, [are] and [said] between the 9th and 10th lines, [point] between the 11th and 12th lines, [said] between the 18th and 19th lines, [an act entitled] between the 22d and 23d lines, [relative thereto] between the 23d and 24th lines, [and] and [also] between the 28th and 29th lines, [following] between the 36th and 37th lines, [sovereignty] between the 40th and 41st lines, [appointed] between the 44th and 45th lines of the first sheet, being interlined; and [of Massachusetts] between the 11th and 12th lines, [native] between the 15th and 16th lines, [ceded] between the 16th and 17th lines, and [so] between the 27th and 28th lines, interlined in the second sheet, and an erasure between the words [until] and (fifteen) made in the second sheet. John Lowell, (L. S.) James Sullivan, (L. S.) Theophilus Parsons, (L. S.) Rufus King, (L. S.) James Duane, (L. S.) Robert R. Livingston, (L. S.) Robert Yates, (L. S.) John Haring, (L. S.) Melancton Smith, (L. S.) Egbert Benson, (L. S.) Witnesses present at the sealing and delivery, George Wyllys, Thos. Seymour, Jesse Root, Jere. Wadsworth, D. Humphreys, Wm. Imlay, Joseph Webb, Simeon De Witt, Lewis Duboys, Nathaniel Bethune. Be it remembered, that on this 30th day of January, in the year of our Lord 1787, personally appeared before me Richard Morris, esq. chief justice of the state of New-York, Jeremiah Wadsworth and Lewis Duboys, esqrs. two of the subscribing witnesses to the within instrument, who being by me duly sworn, did severally depose and say, that they were present, and did see the within named James Duane, Robert R. Livingston,

Robert Yates, John Haring, Melancton Smith, Egbert Benson, John Lowell, James Sullivan, Theophilus Parsons and Rufus King, severally, sign, seal and deliver the within instrument as their, and each of their free and voluntary act and deed to and for the uses and purposes therein mentioned; and that George Wyllys, Thomas Seymour, Jesse Root, D. Humphreys, William Imlay, Simeon De Witt and Nathaniel Bethune, the other subscribing witnesses, were also present, and did, together with the deponents, sign and subscribe their names as witnesses to the execution thereof; and I having inspected the said instrument, and finding no interlineations or material erasures therein, except those noted in the body thereof to have been made before the execution thereof, do allow the same to be recorded. Richard Morris. Secretary's office, office of the state of New-York, ss. I Certify that the within instrument and certificate are recorded in the said office, in book of miscellaneous records, endorsed

A

M R, page 38, &c. Examined and compared with the said record copy thereof, this 2d day of February, 1787, by me Robert Harpur, deputy-secretary. Secretary's office of the state of New-York, ss. I do hereby certify the aforegoing to be a true copy of the original thereof remaining in the said office, (the word "*hath*" between the 27th and 28th lines, and the syllable "*in*" between the 45th and 46th lines, being interlined; and the words "*excises*" on the 39th and "*Richard Morris*" on the 62d lines, being first written on razures.) Examined and compared therewith this 8th day of August, 1787, by me Robert Harpur, deputy-secretary.

APPENDIX B.

TREATY OF THE BIG TREE.

September 15, 1797.

JOHN ADAMS, PRESIDENT OF THE UNITED STATES OF AMERICA.

To all to whom these Presents shall come—GREETING:

Whereas a Treaty was held on the Fifteenth day of September last at Geneseo, in the County of Ontario in the State of New York under the authority of the United States with the Seneka Nation of Indians, and at the said treaty, in the presence and with the approbation of Jeremiah Wadsworth, the Commissioner of the United States, appointed to hold the same, a Convention was entered into between the said Seneka Nation of Indians, and the Claimant of the pre-emption right to the land which is the subject of the said Convention, in which the compensation for the extinguishment of the claims of the said Indians to that land is adjusted:—which Convention is in the words following———

This indenture made the fifteenth day of September in the year of our Lord one thousand seven hundred and ninety-seven, between the sachems chiefs and warriors of the Seneka nation of Indians of the first part, and Robert Morris of the city of Philadelphia Esquire of the second part—

Whereas the Commonwealth of Massachusetts have granted bargained and sold unto the said Robert Morris his heirs and assigns forever the pre-emptive right, and all other the right, title and interest, which the said Commonwealth had to all that tract of land hereinafter particularly mentioned, being part of a tract of land, lying within the State of New York, the right of pre-emption of the soil whereof, from the

native Indians was ceded and granted by the said State of New York to the said Commonwealth—and whereas at a treaty held under the authority of the United States, with the said Seneka nation of Indians at Geneseo in the county of Ontario and State of New York, on the day of the date of these presents and on sundry days immediately prior thereto, by the honorable Jeremiah Wadsworth Esquire a commissioner appointed by the President of the United States to hold the same, in pursuance of the constitution and of the act of the congress of the United States in such case made and provided, it was agreed in the presence and with the approbation of the said commissioner, by the sachems, chiefs and warriors of the said nation of Indians for themselves and in behalf of their nation to sell to the said Robert Morris and to his heirs and assigns forever all their right to all that tract of land above recited and hereinafter particularly specified for the sum of one hundred thousand dollars to be by the said Robert Morris vested in the stock of the bank of the United States, and held in the name of the President of the United States for the use and behoef of the said nation of Indians, the said agreement and sale being also made in the presence, and with the approbation of the honorable William Shepherd Esquire the superintendant appointed for such purpose in pursuance of a resolve of the General Court of the Commonwealth of Massachusetts, passed the eleventh day of March in the year of our Lord one thousand seven hundred and ninety-one. Now this indenture witnesseth that the said parties of the first part for and in consideration of the premises above recited and for divers other good and valuable considerations them thereunto moving, have granted, bargained, sold, aliened,

released, enfeoffed and confirmed and by these presents do grant, bargain, sell, alien, release, enfeoff and confirm unto the said party of the second part, his heirs and assigns forever all that certain tract of land except as is hereinafter excepted lying within the county of Ontario and State of New York being part of a tract of land the right of pre-emption whereof was ceded by the State of New York to the Commonwealth of Massachusetts by deed of cession executed at Hartford on the sixteenth day of December in the year of our Lord one thousand seven hundred and eighty-six, being all such part thereof as is not included in the Indian purchase made by Oliver Phelps and Nathaniel Gorham and bounded as follows, to wit, easterly by the land confirmed to Oliver Phelps and Nathaniel Gorham by the legislature of the Commonwealth of Massachusetts by an act passed the twenty-first day of November in the year of our Lord one thousand seven hundred and eighty-eight, southerly by the north boundary line of the State of Pennsylvania, westerly, partly by a tract of land part of the land ceded by the State of Massachusetts to the United States and by them sold to Pennsylvania, being a right angled triangle whose hypothenuse is in or along the shore of Lake Erie; partly by Lake Erie from the northern point of that triangle to the southern bounds of a tract of land one mile in width, lying on and along the east side of the streight of Niagara, and partly by the said tract to lake Ontario, and on the north by the boundary line between the United States and the King of Great Britain—excepting nevertheless and always reserving out of this grant and conveyance all such pieces or parcels of the aforesaid tract and such privileges thereunto belonging, as are next hereinafter particu-

larly mentioned which said pieces or parcels of land so excepted are by the parties to these presents clearly and fully understood to remain the property of the said parties of the first part in as full and ample manner as if these presents had not been executed, that is to say, excepting and reserving to them the said parties of the first part and their nation one piece or parcel of the aforesaid tract at Canawagus of two square miles to be laid out in such manner as to include the village extending in breadth one mile along the river—one other piece or parcel at Big Tree of two square miles to be laid out in such manner as to include the village extending in breadth along the river one mile, one other piece or parcel of two square miles at Little Beard's town extending one mile along the river to be laid off in such manner as to include the village—one other tract of two square miles at Squawky Hill, to be laid off as follows to wit, one square mile to be laid of along the river in such manner as to include the village, the other directly west thereof and contiguous thereto—one other piece or parcel at Gardeau, beginning at the mouth of Steep Hill creek, thence due east untill it strikes the old path, thence south untill a due west line will intersect with certain steep rocks on the west side of Genesee river, then extending due west, due north and due east untill it strikes the first mentioned bound enclosing as much land on the west side as on the east side of the river—One other piece or parcel at Ka-oun-a-de-au extending in length eight miles along the river and two miles in breadth—One other piece or parcel at Cataraugos beginning at the mouth of the Eighteen mile or Kogh-quau-gu creek thence a line or lines to be drawn parallel to lake Erie at the distance of one

mile from the lake, to the mouth of Cataraugos creek, thence a line or lines extending twelve miles up the north side of said creek at the distance of one mile therefrom, thence a direct line to the said creek, thence down the said creek to lake Erie, thence along the lake to the first mentioned creek, and thence to the place of beginning, Also one other piece at Cataraugos beginning at the shore of Lake Erie on the south side of Cataraugos creek at the distance of one mile from the mouth thereof, thence running one mile from the lake, thence on a line parallel thereto to a point within one mile from the Con-non-dau-we-yea creek thence up the said creek one mile on a line parallel thereto, thence on a direct line to the said creek, thence down the same to Lake Erie, thence along the lake to the place of beginning—Also one other piece or parcel of forty two square miles at or near the Allegenny river—Also two hundred square miles, to be laid off partly at the Buffaloe and partly at the Tannawanta creeks—Also excepting and reserving to them the said parties of the first part and their heirs the privilege of fishing and hunting on the said tract of land hereby intended to be conveyed. And it is hereby understood by and between the parties to these presents, that all such pieces or parcels of land as are hereby reserved and are not particularly described as to the manner in which the same are to be laid off, shall be laid off in such manner as shall be determined by the sachems and chiefs residing at or near the respective villages where such reservations are made, a particular note whereof to be endorsed on the back of this deed and recorded therewith—together with all and singular the rights, privileges hereditaments and appurtenances thereunto belonging or in anywise apper-

taining And all the estate right title and interest whatsoever of them the said parties of the first part and their nation of, in and to the said tract of land above described except as is above excepted to have and to hold all and singular the said granted premises with the appurtenances to the said party of the second part his heirs and assigns to his and their proper use benefit and behoof forever—

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

Robert Morris, by his attorney, Thomas Morris,
Koyengquahtah, als. Young King,
Soonookshewan,
Konutaico, als. Handsome Lake,
Sattakanguyase, als. Two Skies of a length,
Onayawos, or Farmer's Brother,
Soogooyawautau, als. Red Jacket,
Oneghtaugooau,
Connawaudeau,
Taosstaiefi,
Koeentwahka, or Corn Planter,
Oosaukaunendauki, als. to Destroy a Town,
Sooeoowa, alias Parrot Nose,
Toonahookahwa,
Howwennounew,
Kounahkaetoue,
Taouyaukauna,
Woudougoohkta,
Sonauhquaukau,
Twaunauiyana,
Takaunoudea,
Shequinedaughque, or Little Beard,
Jowaa,
Saunajee,
Tauoiyuquatakausea,
Taoundaudish,
Tooauquainda,

Gishkaka, als. Little Billy,
Kaoundoowana, als. Pollard,
Ouneashataikau, or Tall Chief, by his agent Stevenson,
Teahdowainggua, als. Thos. Jemison,
Onnonggaiheko, als. Infant,
Tekonnondee,

Ahtaou,
Taukooshoondakoo,
Kauneskanggo,
Soononjuwau,
Tonowauiya, or Captain Bullet.

Jaahkaaeyas,
Taugihshauta,
Sukkenjoonau,
Ahquatieya, or Hot Bread.
Suggonundau,
Taunowaintooh,
Konnonjoowauna,
Soogooeyaudestak,
Hautwanauekkau, by Young King,
Sauwejuwau,
Kaunoohshauwen,
Taukonondaugekta,
Kaouyanaughque, or John Jemison,
Hoiegush,
Taknaahquau.

To the Indian names are subjoined marks and seals.

Sealed and delivered in presence of—

Nat. W. Howell,
Joseph Ellicott,
Israel Chapin,
James Rees,
Henry Aaron Hills,
Henry Abeel,
Jasper Parrish, } *Interpreters.*
Horatio Jones, }

Done at a full and general treaty of the Seneka nation of Indians, held at Geneseo, in the county of Ontario, and State of New York, on the fifteenth day of September, in the year of our Lord one thousand seven hundred and ninety-seven, under the authority of the United States.

In testimony whereof, I have hereunto set my hand and seal, the day and year aforesaid.

JERE. WADSWORTH, [L. S.]

[Endorsement on face in margin.]

The words "of two square miles" also the words "at the shore of Lake Erie" also the word "Part" also the words "mile from* being interlined.—And the word "to a point within one" written on erasure.

[Endorsement on face.]

State of New York ss: I Thomas Cooper, Master in Chancery certify that on the third Day of May in the Year of our Lord one thousand seven hundred and ninety eight, came before me Jere. Wadsworth known to me to be the same person described in and who has executed the preceding writing, who did acknowledge that he did execute the same ——— There being no Erasures or Interlineations therein I do allow it to be recorded——

THOMAS COOPER

*Quotation-mark absent in original.

[Endorsement on back.]

Pursuant to a resolution of the legislature of the Commonwealth of Massachusetts, passed the eleventh day of March in the year of our Lord one thousand seven hundred and ninety-one, I have attended a full and general treaty of the Seneca nation of Indians, at Geneseo, in the county of Ontario, when the within instrument was duly executed in my presence by the Sachems Chiefs and warriors of the said nation, being fairly and properly understood and transacted by all the parties of Indians concerned, and declared to be done to their universal satisfaction. I do therefore certify and approve of the same.

WM. SHEPARD.

Subscribed in presence of—
NAT. W. HOWELL.

[Endorsement on back.]

State of New York, ss: I Thomas Cooper, Master in Chancery, certify that on the twenty-first Day of May, in the year of our Lord one thousand seven hundred and ninety-eight came before me Joseph Ellicott known to me to be the subscribing witness of that Name to the within Instrument of Writing, who being duly sworn doth on his oath say that he saw Thomas Morris as the attorney of and for Robert Morris, in the within Instrument of Writing mentioned, execute the said Instrument of Writing for the said Robert Morris, that the Deponent subscribed his Name as a witness thereto and that he saw Nat. W. Howell, Israel Chapin, James Rees, Henry Aaron Hills and Henry Abeel together with Jasper Parrish and Horatio Jones, the said Parrish and Jones being Interpreters, sign their Names as witnesses thereto; and I having satisfactory evidence that the Depo-

nent knew the said Thomas Morris and that he is the same person described by that Name in the said Instrument of Writing and who has executed the same and there being therein none but the noted alterations, I do allow it to be recorded as the Deed of the said within mentioned Robert Morris——

THOMAS COOPER.

[Endorsement on back.]

Recorded in the Secretary's Office of the State of New York in Book of Deeds endorsed $\frac{\text{M R}}{\text{I}}$ page 334 &c this 7th day of June 1798.—

DANIEL HALE Sec'y.

[Endorsement on back.]

State of New York, ss: I, Thomas Cooper, Master in Chancery do certify that on the twenty first Day of May in the year of our Lord one thousand seven hundred and ninety eight came before me Joseph Ellicott, known to me to be the subscribing witness of that Name to the within Instrument of writing who being by me duly sworn doth on his oath say that he saw the several Persons whose names are subscribed and seals affixed to the said Instrument of writing and who are described in the said Instrument of Writing as the Sachems, Chiefs and warriors of the Seneca Nation of Indians, respectively execute the said Instrument of writing, that he the Deponent subscribed his Name as a witness thereto; that he saw Nat. W. Howell, Israel Chapin, James Rees, Henry Aaron Hills and Henry Abeel together with Jasper Parrish and Horatio Jones, the said Parrish and Jones being Interpreters, subscribe their Names as witnesses thereto; that he knew the said several Persons who so executed the said Instrument of writing and that they were the same Persons who are

described in the said Instrument of writing as the Sachems, Chiefs and warriors of the Seneca Nation of Indians, which being to me satisfactory evidence that the Deponent knew the said several Persons who so as aforesaid executed the within Instrument of writing and that they are the same Persons described as the Sachems, Chiefs and Warriors of the Seneca Nation of Indians in the said Instrument of writing and who have executed the same and there being therein none but the noted alterations I do allow it to be recorded as the acts and Deeds of the said Sachems, Chiefs and Warriors of the Seneca Nation of Indians respectively ———

THOMAS COOPER.

[Indorsement on back.]

Now be it known, That I JOHN ADAMS, President of the United States of America, having seen and considered the said Convention or Treaty, and being satisfied that the Investment of the money therein mentioned, has been made conformably to the intention of the said Convention or Treaty DO by and with the Advice and Consent of the Senate, accept, ratify and confirm the same, and every clause and article thereof.

In testimony whereof, I have caused the Seal of the United States of America to be affixed to these Presents, and signed the same with my Hand. DONE at the City of Philadelphia, the Eleventh day of April in the Year of our Lord one thousand seven hundred and ninety-eight, and of the Independence of the United States of America, the Twenty-Second.

JOHN ADAMS

By the President of the United States

TIMOTHY PICKERING

Sec'y of State.

APPENDIX C.

"An Act to regulate Trade and Intercourse with the Indian Tribes, and to preserve Peace on the Frontiers."

Approved May 19, 1796 (1 Stat. 469).

* * * * *

Sec. 12. And be it further enacted, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty, or convention, entered into pursuant to the constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held, or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: Provided nevertheless, that it shall be lawful for the agent or agents of any state, who may be present at any treaty held with Indians, under the authority of the United States, in the presence, and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made, for their claims to lands within such state, which shall be extinguished by the treaty.

APPENDIX D.

As showing the conceptions of the Indians at the time of the treaty concerning their relations to the United States and the State of New York, see quotations below from a practically contemporaneous speech by the Seneca chief, Red Jacket (1802). An Indian, while drunk, had killed a white man on the reservation and the State officials demanded that the Indians surrender him for trial by a State court. The United States commissioner to the Indians had been removed and a successor appointed without consultation with the Indians.

> Brothers, since this accident has taken place we have been informed that by the laws of this State, if a murder is committed within it the murderer must be tried by the laws of the State and punished with death.
>
> Brothers, when were such laws explained to us? Did we ever make a treaty with the State of New York and agree to conform to its laws? No. We are independent of the State of New York. It was the will of the Great Spirit to create us different in color; we have different laws, habits, and customs from the white people. We shall never consent that the government of this State shall try our brother. We appeal to the Government of the United States.
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> Brothers, the President of the United States is called a great man, possessing great power. He may do what he pleases; he may turn men out of office—men who held their offices long before he held his. If he can do these things can he not even control the laws of this State? Can he not appoint a commissioner to come forward to our country and settle the present

> difference, as we, on our part, have heretofore often done to him upon a similar occasion?
>
> We now call upon you, brothers, to represent these things to the President, and we trust that he will not refuse our request of sending a commissioner to us, with powers to settle the present difference. The consequence of a refusal may be serious. We are determined that our brother shall not be tried by the laws of the State of New York. Their laws make no difference between a crime committed in liquor and one committed coolly and deliberately. Our laws are different, as we have before stated. If tried here our brother must be hanged. We can not submit to that. Has a murder been committed upon our people? When was it punished with death? *Stone's Life of Red Jacket*, pp. 175, 176 (Wiley & Putnam, 1841).

As further showing the conception of the Indians, see letter of Timothy Pickering, Commissioner of the United States, to Gen. Knox, Secretary of War, referring to another sale of Seneca lands by the tribe to certain descendants of some of the Senecas in 1791:

> Here was the ground of my ratification. Now, you will be pleased to recollect that before the matter was opened in council I had repeated the law of the United States relative to Indian lands and the solemn declaration of the President last winter to the Cornplanter that they (the Indians) had the right to sell, or to refuse to sell, their lands, and that, in respect to their lands they might depend on the protection of the United States, so that on this head they had now no cause for jealousy or discontent. This being by them well understood, I saw no way of avoiding the ratification of the assignment to their

two children, without reviving or rather exciting their utmost jealousy, as it would have been denying the free enjoyment of their own lands by some members of the nation, according to the will of the nation; and a denial, I was apprehensive, would lead them to think that the solemn assurance of the President was made but to amuse and deceive. *The Treaty of Big Tree,* by W. H. Samson, in *Livingston County Historical Society Proceedings,* 19th Annual Meeting, Jan. 15, 1895.

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